IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

WP(C).No. 18225 of 2007(T)

AGAINST THE ORDER IN IA.112/93 IN OS.172/1991 of MUNI-MAGI.COURT,PERINTHALMANNA

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PETITIONERS:

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1. **AMBALAKKAT SASIDHARAN, S/O. LAKSHMIKKUTTY, `AMBALAKKAT HOUSE', KANAKKANCHERI, PERINTHALMANNA, MALAPPURAM DISTRICT.**

2. **AMBALAKKAT SATHIDEVI, D/O.LAKSHMIKKUTTY, `AMBALAKKAT HOUSE',KANAKKANCHERI, PERINTHALMANNA, MALAPPURAM DISTRICT.**

BY ADV. SRI.R.RAJESH KORMATH

RESPONDENTS:

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1. **SULOCHANA, D/O. AMBALAKKAT KARIKKA, `NEAR VALLUVANAD VIDYA BHAVAN, OLINGARA, ERAVIMANGALAM, P.O., PERINTHALMANNA TALUK, MALAPPURAM DISTRICT.**

2. **AMBALAKKAT CHAMI, (* S/O. LAKSHMIKKUTTY IS DELETED 'AMBALAKKAT HOUSE', AND SUBSTITUTED BY "KARIKKA" KANAKKANCHERI, AS PER ORDERDTD. 14/08/07 IN PERINTHALMANNA, I.A.NO.10972/07.) MALAPPURAM DISTRICT.**

3. **BALAN, S/O. KARIKKA, `PATHARI HOUSE', MANATHMANGALAM, PERINTHALMANNA P.O., MALAPPURAM DISTRICT.**

4. MUNDI,
W/O.AMBALAKKAT KARIKKA,
'NEAR VALUVANAD VIDYA BHAVAN',
OLINGARA, ERAVIMANGALAM P.O.,
PERINTHALMANNA TALUK,
MALAPPURAM DISTRICT.

5. SOBHANA,
D/O.SUKUMARAN,
'KANGIL PARAMBIL', HIGH SCHOOL ROAD,
KARALMANNA P.O., OTTAPPALAM TALUK,
PALAKKAD DISTRICT.

6. SURESH,
S/O.LATE SUKUMARAN,
'KANGIL PARAMBIL', HIGH SCHOOL ROAD,
KARALMANNA P.O., OTTAPPALAM TALUK,
PALAKKAD DISTRICT.

7. VALLI,
W/O.LATE SUKUMARAN,
'KANGIL PARAMBIL', HIGH SCHOOL ROAD,
KARALMANNA P.O., OTTAPPALAM TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.T.SETHUMADHAVAN for R1 & R4
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WPC.NO.18225/2007 T

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE AFFIDAVIT DTD. 24/10/1994 ACCOMPANYING I.A.1114 OF 1994 IN A.S.61 OF 1993 ON THE FILE OF THE COURT OF THE DISTRICT JUDGE, MANJERI.**

EXT.P2: **COPY OF THE COUNTER STATEMENT DTD. 9/01/1995 FILED BY THE FIRST RESPONDENT.**

EXT.P3: **COPY OF THE STATEMENT DTD. 24/10/1994 FILED BY THE COUNSEL FOR THE APPELLANTS IN A.S.61 OF 1993 ON THE FILE OF THE COURT OF THE DISTRICT JUDGE, MANJERI.**

EXT.P4: **COPY OF THE AFFIDAVIT DTD. 4/10/1999 ACCOMPANYING I.A.952 OF 1999 IN A.S.61 OF 1993 ON THE FILE OF THE COURT OF THE DISTRICT JUDGE, MANJERI.**

EXT.P5: **COPY OF THE JUDGMENT DTD. 29/07/2002 IN A.S.61 OF 1993 ON THE FILE OF THE COURT OF THE DISTRICT JUDGE, MANJERI.**

EXT.P6: **COPY OF THE ORDER DTD. 31/07/2003 IN I.A.NO.112 OF 1993 IN O.S.NO.172 OF 1991 ON THE FILE OF THE MUNSIFF-MAGISTRATE, PERINTHALMANNA.**

EXT.P7: **COPY OF THE I.A.NO.60 OF 2006 DTD. 5/01/2006 IN I.A.NO.112 OF 1993 IN O.S.NO.172 OF 1991 ON THE FILE OF THE MUNSIFF-MAGISTRATE, PERINTHALMANNA.**

EXT.P8: **COPY OF THE ORDER DTD. 12/04/2006 IN I.A.NO.60 OF 2006 IN I.A.NO.112 OF 1993 IN O.S.NO.172 OF 1991 ON THE FILE OF THE MUNSIFF-MAGISTRATE, PERINTHALMANNA.**

/TRUE COPY/

P.S.TO JUDGE

KSS

M.N.KRISHNAN, J

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W.P.(C) No.18225 OF 2007

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Dated this the 6th day of November 2007

JUDGMENT

This writ petition is preferred against the order of the Munsiff-Magistrate Court, Perinthalmanna whereby it refused to review the final decree passed by it. The suit was one for partition. A preliminary decree was passed. Against the preliminary decree an appeal was preferred as A.S.No.61 of 2003 before the District Court, Manjeri by defendants 1 to 3 as appellants 1 to 3. They moved an application I.A.No. 1114 of 1994 before the District Court, Manjeri contending that the rights of appellants 1 and 3, i.e. defendants 1 and 3 had been assigned by them on bona fide belief and for valuable consideration in favour of one Lekshmikutty as per Document No.2950 of 1994. To the said application, the first respondent therein filed a counter statement raising a contention that the legal heirs of the first appellant are Sobhana, Suresh and one Valli. The appellate court, after considering the matter, impleaded Smt.Lekshmikutty as the 3rd respondent. During the pendency of the appeal, the 3rd respondent died and her legal heirs were impleaded as respondents 4 and 5. These two persons

are the present review petitioners before the court below.

2. The court below in the final decree application did not implead these persons at all. The final decree petitioners did not move an application to implead a party to the final decree proceedings. Instead, they impleaded the legal heirs of deceased first defendant and a final decree had been passed. It is rudimentary that the final decree application shall include all the parties, who have got interest in the subject matter of the suit. When the appellants themselves filed an application before the appellate court mentioning the number of the document and after the objections raised by the other side, the court impleaded the purchaser as supplemental 3rd respondent before the appellate court. So, the appellate court has considered the matter in the proper perspective and found that Lekshmikutty was a necessary party to the appeal on the ground that she had purchased the rights of defendants 1 and 3. On her death, respondents 4 and 5 were impleaded as legal heirs. So, it has to be stated that whatever right defendants 1 and 3 had in the property by virtue of a transfer to Lekshmikutty and the same right is succeeded by respondents 4 and 5 in the appeal on her death. In other words, it has to be stated that respondents 4 and 5 in the appeal, who are the review petitioners before the Munsiff's

Court are entitled to have right over the property by stepping into the shoes of their mother as legal representatives. Neither the final decree petitioners nor the court attempted to implead these persons as parties whereas they impleaded the transferor, the first defendant as legal heir to the proceedings. But it has to be held that the final decree application has been adjudicated without necessary and proper parties on record and therefore it is an error apparent on the face of the record which requires correction at the hands of the court which passed the order. The court below should not have rejected the review application on the ground that as the father of these persons were party to the proceedings, he should have made those person as a party in the final decree application. It is true that there are some laches on the part of the petitioners as well.

Therefore, I set aside the order passed by the learned Munsiff, allow the review application and restore the final decree petition and thereafter a direction is given to the final decree petitioners therein to implead the review petitioners as parties and after hearing them, the court shall further proceed in accordance with law and pass a final decree. I make it clear that the review petitioners have to be heard even in the case of allotment and if

remittal of the Commissioner's report is necessary, that may also have to be done by the court below.

Writ petition is disposed of accordingly.

M.N.KRISHNAN, JUDGE

Cdp/-